

MARGARITA GONZALEZ, )  
)  
Plaintiff, ) NO. CIV-14-291-D  
)  
vs. )  
)  
STATE OF OKLAHOMA, ex rel., )  
OKLAHOMA DEPARTMENT OF )  
CORRECTIONS, *et al.*, )  
)  
Defendants. )

This matter is before the Court for review of the Report and Recommendation [Doc. No. 20] issued on June 26, 2014, by United States Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). In this action brought pursuant to 42 U.S.C. § 1983, Plaintiff alleges a violation of her federal constitutional rights during her previous confinement at the Mabel Bassett Correctional Center (MBCC). In her Amended Complaint, Plaintiff named as Defendants the State of Oklahoma, *ex rel.*, the Oklahoma Department of Corrections (ODOC), former ODOC Director Justin Jones, who is sued in his official and individual capacities, former MBCC Warden Millicent Newton-Embry, who is sued in her official and individual capacities, ODOC Director Robert Patton, who is sued in his official capacity, MBCC Warden Rickey Moham, who is sued in his official capacity, and “John Does 1-10.”

Pursuant to Fed. R. Civ. P. 12(b)(1) and (6), Defendants (not including the John Doe Defendants) moved for dismissal of Plaintiff's § 1983 claims brought in count two of the Amended Complaint. In the Report and Recommendation, Judge Purcell recommends granting the Motion to Dismiss as to Plaintiff's § 1983 claims against Defendant ODOC and against Defendants Jones, Newton-Embry, Patton and Moham in their official capacities on grounds of Eleventh Amendment immunity. Judge Purcell further recommends denying the Motion to Dismiss as to Plaintiff's § 1983

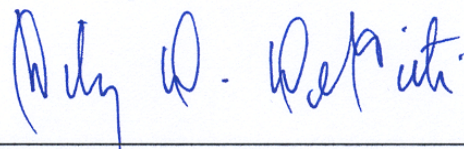
claims against Defendants Jones and Newton-Embry in their individual capacities based on Plaintiff's request for leave to file a second amended complaint to cure any deficiencies in her pleading as to these claims. The record reflects Plaintiff timely filed a Second Amended Complaint [Doc. No. 21] on July 16, 2014.

No party has filed a timely objection to the Report and Recommendation or requested additional time to object, although the parties were expressly advised of the right to object and the deadline for objections. Thus the Court finds all parties have waived further review of the issues addressed in the Report.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 20] is ADOPTED in its entirety. Defendants' Motion to Dismiss is GRANTED as to Plaintiff's § 1983 claims against Defendant ODOC and against Defendants Jones, Newton-Embry, Patton and Moham in their official capacities and those claims are DISMISSED with prejudice. Defendants' Motion to Dismiss is DENIED as to Plaintiff's § 1983 claims against Defendants Jones and Newton-Embry in their individual capacities, without prejudice to its renewal as to the claims raised in Plaintiff's Second Amended Complaint.

IT IS FURTHER ORDERED that the case is again referred to Judge Purcell under 28 U.S.C. § 636 for further proceedings consistent with the initial case referral.

IT IS SO ORDERED this 23<sup>rd</sup> day of July, 2014.



---

TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE